

BEFORE EDMUND D. EDELMAN

ARBITRATOR

In the Matter of the Grievance Arbitration	)	
	)	
Between	)	OPINION
	)	
CORCORAN FACULTY ASSOCIATION	)	CSMCS No: ARB –01-0334
and AL DAVENPORT	)	
	)	
And	)	
	)	
CORCORAN UNIFIED SCHOOL DISTRICT	)	
	)	
_____	)	

The arbitrator was selected mutually by the parties from a list provided by the State Mediation and Conciliation Service.

BACKGROUND

This “grievance” stems from an incident that occurred at “Back to School Night” on October 11, 2001. Specifically, the Grievant, Al Davenport, a physical education teacher at John Muir Middle School, was speaking before a group of parents and students. During the meeting, report cards were to be handed out for physical education classes and parent-teacher conferences were to be set up to discuss report cards with parents. Al Davenport was speaking when he was interrupted by Sam Ramirez who yelled out “spare us the lecture.” Sam Ramirez’s son was in one of Davenport’s classes. Davenport was speaking about the lack of discipline in the home and therefore the need to have appropriate discipline in the school. Ramirez again

interrupted Davenport, asking “what do you mean, explain yourself.” He continued to press Davenport with his question. Davenport believed that Ramirez was overly aggressive and hostile and was trying to provoke him. Davenport also felt that the crowd was moving in on him and he was losing control of the situation. He therefore turned the meeting over to Michelle Adams, a fellow physical education teacher.

Davenport then walked out of the meeting and went into the office of the Vice Principal, Mike Graville and said that he was not feeling well. Graville then drove Davenport to the emergency room at the local hospital. The CAT scan showed that Davenport may have suffered a stroke; he remained in the hospital over night. Following this hospitalization, he missed five days of work. Mr. Davenport testified that he is still under doctor’s care and must monitor his blood pressure frequently.

The Union filed a grievance on behalf of Al Davenport claiming that the safety provisions of the Collective Bargaining Agreement , sections 10.1 and 10.2, were violated. The Grievant requests that: 1) his worker’s compensation not be docked for any sick leave or salary loss as a result of the incident; 2) that all medical expenses be covered; 3) that Mr. and Mrs. Ramirez not be allowed access to the classroom or teachers and that all meetings with them be held in the school site office with the site/ District administration present; 4) that there be advanced written notice to the school staff about safety hazards at the site.

#### QUESTIONS PRESENTED

The parties stipulated to the following: “Did the District violate Article 10, the safety article of the Collective Bargaining Agreement with respect to the incident of

October 11, 2001? And if so, what is the appropriate remedy?”

### UNION POSITION

The Union contends that under the Collective Bargaining Agreement, the district has a duty to maintain a safe working environment for its teachers and staff. This would include an environment free of physical danger as well as abusive or unacceptable conduct being directed by parents or others against teachers and other school employees. The Union contends that the District should hold parents accountable for their conduct on school sites. The Union argues that parents have the right to express their viewpoints but they should not engage in verbal abuse, intimidation and confrontational conduct against teachers and staff. The Union asserts that the District had prior knowledge about the pattern of abusive conduct of Sam Ramirez from a number of incidents over the years. The Union contends that the District did not protect teachers against the conduct of Ramirez. The Union argues that the District can and should restrict the access of Sam Ramirez to school sites in a manner that protects the teachers and staff.

### DISTRICT POSITION

The District contends that the grievance arose from an open house meeting where Sam Ramirez, a parent, and Al Davenport, the grievant, got into a verbal confrontation. The District asserts that there was no physical force or threat of force by Ramirez against Davenport. The District argues that the conduct of Ramirez did not pose a threat to the safety of Al Davenport and therefore there was no violation of the

safety provision of the Collective Bargaining Agreement.

The District further contends that since May 8, 2001 when the School Board met to discuss another incident involving Sam Ramirez and the district staff, the conduct of Ramirez has not caused any problems to teachers or staff.

The District also asserts that Davenport and the Union were given an opportunity to engage in mediation involving Ramirez and the District but that Davenport and the Union refused to accept. The District further argues that it would be an infringement on the ability of parents to speak openly at school meetings involving their children if their speech or presence was in any way restricted. In conclusion the District argues that while Ramirez might have been overzealous on behalf of his children, that he never physically threatened teachers or staff. Therefore, the District contends that the grievance should be denied.

### DISCUSSION

The fundamental question in this case is the proper interpretation of Section 10.1 of the Collective Bargaining Agreement. That section reads:

“The District shall maintain safe working conditions for all teachers covered by this agreement.”

The District contends that Section 10.1 relates only to the physical safety of teachers while the Union argues that “safe working conditions” includes a working environment free of verbal abuse, hostile confrontations and intimidation.

Section 10.2 reads:

The Unit members may notify their immediate supervisor in writing concerning an

unsafe condition in the District affecting their physical welfare. Their immediate supervisor shall investigate said reported unsafe condition and advise those unit members in writing of any findings and suggested corrective action.”

The words “physical welfare, ” the District would argue, means protecting teachers from bodily harm. However, the arbitrator notes that emotional and mental stress could adversely affect a person’s health and welfare.

The Board policies relating to safety must also be considered before reaching any definitive conclusion on the scope of the District’s duty to maintain “safe working conditions”.

Board Policy 1250 in pertinent part reads as follows: “The principal or designee may refuse to register any visitors whose acts or presence he/she judges would disrupt normal school operations, threaten the health or safety of students or staff, or cause problems. (Penal Code section 627.4.)”

Board Policy 3514 reads as follows: “The governing board believes that District students and employees have the right to learn and work in a safe and peaceful School....Besides assuring that its physical plants are secure, the Board is committed to protecting students, employees, and the public from potentially disrupting or violent situations on school grounds. District campuses shall enforce Board policies related to safety, crime, student conduct and discipline.”

Board Policy 3514.1 reads as follows: “The governing board of the Corcoran Unified School District is committed to establishing and maintaining a safe and healthful work place for all employees. . . .”

These Board policies broaden the duty of the District to protect teachers and

staff in their “health” (BP 1250), their peace (BP3514) and to maintain a healthful workplace (BP 3514.1). Verbal abuse and hostility directed against teachers and staff could threaten “a healthful workplace”. To interpret Section 10.1 of the Collective Bargaining Agreement narrowly would defeat the language of the Board policies cited above.

The next question to be determined by the Arbitrator is whether, prior to October 11, 2001, the District had knowledge of conduct by Ramirez falling within the broader interpretation of “safe working conditions” of the collective bargaining agreement or within the language of the Board policies cited above. The evidence shows the following:

1) Former Superintendent, Allen Asplund testified that Ramirez came to his home in 1994 to protest the discipline of his nephew by the principal of the school where his nephew was enrolled. Mr. Asplund testified that it was the first time that parent had ever come to his home to complain. He indicated that Ramirez was very upset that he would not override the principal’s decision to discipline his nephew so that his nephew could not take a field trip with his class. Asplund testified that Ramirez disparaged him by saying that Aspund did not have the “courage” or “guts” to override the principal. He had to ask Ramirez to leave.

2) Mary Hill, a teacher testified that in a meeting in the principal’s office in 1996 Ramirez became very abrasive and she felt intimidated because of his conduct.

3) Craig Wheaton, former Principal in the Corcoran Unified School District, testified that in 1998 Ramirez stormed out of a meeting with him because he would not transfer his son from Mandy Powell’s class. Although Craig Wheaton indicated that he

never felt physically threatened, he felt that Ramirez was out of line in his conduct.

4) Mandy Powell, a teacher at Fremont Elementary School, testified that in 1999 she felt stress from Ramirez's conduct when she met with him and Craig Wheaton regarding the rules that she imposed on one of Ramirez's sons. Although she never felt physically threatened, she did feel stress from Ramirez's behavior.

5) Margie Molina, a library technician and attendance clerk, testified that in 2001 she felt verbally attacked by Ramirez when he confronted her during a meeting in regard to the actions she took in relation to one of his sons. While she never felt physically threatened, she felt verbally attacked and abused by Ramirez.

6) Steven Brown, the principal at Mark Twain, corroborated Margie Molina's experience with Ramirez, namely, that Ramirez was confrontational and that Ramirez used inappropriate language toward Ms. Molina in a hostile manner.

7) Mr. Brown wrote a memo to the School Board for the May 8, 2001 Board meeting outlining his concerns about the conduct of Ramirez. At that meeting Ms. Molina and Brown were asked questions about the letters they had written to the Prison Warden at Corcoran State Prison where Mr. Ramirez worked as a Prison Guard. Both Molina and Brown had complained about Ramirez' conduct toward District staff to the Warden. Those letters listed the conduct of Ramirez that Steve Brown and Margie Molina felt was inappropriate. In the memo for the May 8<sup>th</sup> Board meeting Steve Brown listed the reasons why he was recommending that Ramirez be restricted from school sites. Mr. Brown listed a number of instances where Ramirez violated District policy by bypassing the school office and going to the teacher's classroom to take his child out of school before the normal pick-up time and also bypassing procedures to talk to his

child. In the memo Brown indicated that one of the staff at the school, Mrs. Abbott, indicated to Brown that she was afraid of the reaction of Mr. Ramirez if she required him to follow policy rules. Further, the memo asserted that Ramirez confronted teachers and responded in an “agitated, angry and demanding manner.” The memo recited that many of the staff and teachers were afraid to complain about Mr. Ramirez because of his threats of legal action or that he would take the matter to the School Board. Therefore, Brown asserted that many employees had been reluctant to speak out against Mr. Ramirez. Also in that memo Mr. Brown indicated that a Mrs. Peterson requested that he, Mr. Brown, be on campus when Ramirez comes in to talk to her because “she is not comfortable alone with Mr. Ramirez”

The Board minutes of the May 8<sup>th</sup> meeting make it clear that the Board and the Administration were aware of complaints about the conduct of Ramirez toward teachers, principals and staff. The minutes read as follows:

“The Board reconvened at 9:20 p.m. On a 5-0 vote the Board directed the administration to ask legal counsel to draft a letter rescinding a complaint to the prison; approve the support of Board policies discussed and ask that staff enforce those policies; directed the administration to vigorously pursue harassment against employees and assure them of support; and directed administration to bring in an independent mediator to try and settle the issues discussed.”

In light of these minutes and the above cited incidents, there can be no question that the School Board and the Administration were aware of the hostile,



confrontational and intimidating conduct of Ramirez. In fact, Margie Molina testified that one of the members of the School Board in the executive session warned Ramirez to follow rules and be courteous to District staff. The minutes clearly express the Board's concern about the conduct of Ramirez when it "directed administration to vigorously pursue harassment against employees and assure them of support and directed administration to bring in an independent mediator to try to settle the issues discussed." The District argues that since May 8, 2001, there have been no problems regarding Ramirez and the District staff. The District had a positive duty under the terms of the Collective Bargaining Agreement, the Board Policies and the Board Order of May 8, 2001 to protect and support its employees. There was no evidence introduced by the District indicating what actions, if any, it took relating to Mr. Ramirez or supporting District staff after the May 8, 2001 Board meeting as ordered by the Board. The Arbitrator notes that the independent mediation ordered by the Board at the May 8, 2001 meeting to settle some of the issues did not take place until well after the incident of October 11, 2001 involving the grievant, Al Davenport.

### CONCLUSION

The Arbitrator finds that the District was aware of a pattern of hostile, intimidating and harassing conduct by Ramirez prior to the incident of October 11, 2001. The incident of October 11, 2001 involving Ramirez and Davenport cannot be taken in isolation. The testimony of District staff at the hearing clearly indicated a pattern of conduct of Ramirez that was confrontational, verbally abusive and intimidating to teachers and staff over a period of many years. While there was no evidence of threats

to the physical safety of teachers, the Board policies clearly require the District to maintain a work environment free of verbal intimidation, confrontation and verbal abuse. Also, to interpret the safety provisions of the Collective Bargaining Agreement narrowly would ignore the fact that verbal abuse and intimidation can be damaging to the emotional and mental health of teachers and staff. It is well documented that stress and emotional trauma may have a profound impact upon general physical health.

The District did not provide any evidence that it sought to intervene and/or counsel Ramirez in order to protect teachers and staff against his confrontational and intimidating conduct after the May 8, 2001 Board meeting. Moreover, the arbitrator notes the Administration failed to carry out the Board's order for mediation in a timely manner.

### ORDER

The District is ordered to do the following:

- 1) cover medical expenses of Al Davenport that arose out of the October 11, 2001 incident
- 2) restore any sick time used by the grievant as a result of the incident
- 3) protect district staff against further intimidation and verbal abuse by Mr. Ramirez by counseling and/or admonishing him.; if verbal intimidation or hostile conduct persists despite these measures, Ramirez's access to the classroom should be appropriately restricted.

Dated: January 2, 2003

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Edmund D. Edelman  
Arbitrator